IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17462 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE ANANT S.DAVE

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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VEGASING SWARNSING JAT - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR AR SHAIKH for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,
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CORAM : HONOURABLE MR.JUSTICE ANANT S.DAVE

Date : 19/09/2005

ORAL JUDGMENT

1. The order of detention dated 06.07.2005 passed by the District Magistrate, Banaskantha, Palanpur, has been challenged by the detenue that exercised of powers under Subsection 2 of Section 3 of the Gujarat Prevention of Antisocial Activities Act (for short, 'the PASA Act'), 1985 in detaining the detenue as “Bootlegger” as defined under Section 2(b) of the Act is violative of Article 226, 14,19, 21 and 22 of the Constitution of India.

2. Alongwith the order of detention dated 06.07.2005, the grounds, on which the order of detention dated 06.07.2005 was passed , were supplied to the detenue as per requirement of Subsection 1 of Section of the Act. According to the Detaining Authority, he indulges into illegally supply of IMFL and the said activities of importing liquor in the State result into disturbance of public order and general health of public. That even it is not possible for the concerned authority to take recourse the provision under Section 93 of the Prohibition Act or even in proceedings under Section 57 of the Bombay Police Act, 1951 and, therefore, the remedies under ordinary law are not sufficient and, therefore, powers under the Act are exercised so as to prevent the detenue from indulging into such prejudicial antisocial and criminal activities.

3. The learned advocate Mrs.Banna Dutta

appearing for the detenue, has contended that the order of detention is vulnerable on numbers of the grounds as stated in the petition. However, she restricted her arguments on the ground that registration of solitary offence from provisions of the Bombay Prohibition Act, 1949, by itself is not sufficient to affect the public order or general health of the public detrimentally. She has further submitted that branding the detenue as bootlegger is a different aspect, but there has to be nexus that the prejudicial activities which has bearing on disturbance of public order and general health of the public. According to her, except the registration of crime as stated in the grounds supplied alongwith the date on which the order of detention was passed, no other credible materials did exist before the detaining authority to come to the conclusion, after application of mind to the facts germane to the passing of the order and arriving at the

subjective satisfaction that even if the detenue is arrested, he is likely to be released on bail by the court of law in events of his filing application of bail, and thereafter also to continue in similar activities and prejudicial activities in future. For all these conclusions, the concerned authority has not stated anything in the order of detention and after recital of certain phrases similar in such type of cases, the order of detention is passed and, therefore, according to her the same is not preventive but is punitive.

In view of the above mentioned submissions, a support drawn from the decision of this Court in Letters Patent Appeal No.223/2000 and also of the Apex Court, AIR 1989 SC 491 and AIR 2003 SC 971 and submitted that in the facts of the present case also, the law laid down by the courts in the decision

(Supra) is applicable and the order of detention be quashed and set aside.

4. To counter the submissions of the learned advocate for the petitioner, Mrs. Hansa B. Punani, learned Assistant Government Pleader has submitted that detaining authority was satisfied and the subjective satisfaction was arrived at on the basis of relevant materials, including the registration of solitary crime registered as mentioned in the order of detention. It was submitted, that there was sufficient material from the records of the case disclosing that antisocial activities of the detenue are having the potential to disturb the public order and public health, and, therefore, even registration of solitary crime under the provisions of Bombay Prohibition Act, 1949 is sufficient enough to warrant exercise of powers under section 2(b) of the Act. Therefore, according to her, this is not a case

where the powers under Article 226 of the Constitution of India are required to be exercised.

5. Mrs. Hansha B. Punani, learned Assistant Government Pleader has tried to support the order of detention but could not substantiate the same on legal and factual aspects.

6. Considering the facts and rival submissions and on perusal of the records of the case and the order dated 18.08.2005 passed in Special Civil Application No.11733 of 2005 and other reported cases on the issue, I am inclined to accept the submissions of learned advocate for the detenue that registration of crimes for the offences punishable under the Bombay Prohibition Act, 1949 by itself cannot said to have bearing or nexus on the disturbance of the public order or the general health of the public and, therefore, the decision reported in

the case of **Darpan Kumar Sharma Vs. State of T.N.,** reported in 2003 (2) SCC 313 is applicable in the facts of the present case particularly para-5 which reads as under:-

> “5. The basis upon which the petitioner has been detained in the instant case is that he robbed one Kumar at the point of knife a sum of Rs.1,000. Any disorderly behaviour of a person in the public or commission of a criminal offence is bound to some extent, affect the peace prevailing in the locality and it may also affect law and order, but the same need not affect maintenance of public order. Under the definitions in the Act, it is stated that in the case of “goonda” the acts prejudicial to public order are “when he is engaged, or is making preparations for engaging, in any of his activities as a goonda which

affect adversely, or are likely to affect adversely, the maintenance of public order”

The important question considered by the Supreme Court “ whether a man has only committed a breach of law and order or has acted in a manner likely to cause disturbance of the public order” is very well explained in the decision reported in 2000 (4) GLR 3623 in the case of **Amanulla Khan Kudeatalla Khan Pathan Vs. State of Gujarat and Ors.** as under:-

“ Even an activity violating an ordinary legal provision may in a given case be a matter of public order. It is the magnitude of the activities and its effect on the even tempo of life of the society at large or with a section of society that determines whether the activities can be said to be prejudicial

to the maintenance of public order or the same amounted to breach of law and order. The fall-out and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at large or a large section of society."

6. The above circumstances and the judgments are clearly applicable in the present case and, therefore, the order of detention is to be quashed and set aside as the same is unjust, unconstitutional, illegal and violative of Article 21 and 22 of the Constitution of India.

That another case of disturbance of public order by prejudicial activities of the detenue is considered by the Division Bench in the decision reported in L.P.A. 223 OF 2000 in Special Civil

Application No.554 of 2000 wherein in Para- 5 of the said judgment, law laid down by the Apex Court in case of **K.S.Zala Vs State of Gujarat** is discussed is as under:-

> "5:- If we examine the present case on the anvil of the test which has been applied by the Supreme Court in the case of K.S.Zala Vs. State of Gujarat (Supra), i.e. with regard to the presence of credible material and as to how the detaining authority has made the mention against the appellant being an obstruction to the public health and public order, we find that in the instant case so far as the statements of the witnesses which were recorded with regard to unregistered cases, that ground has been rejected by the learned Single Judge himself. It is , of course, true that after narrating the authority has mentioned that the activities of the appellant were an obstacle to the public health and public order, but this bald observation cannot be taken to be decisive so as to arrive at the satisfaction that the activities of the petitioner were prejudicial to the public order or public health and that tempo of public life was disturbed. No observation made in any part of the judgment can be read in isolation and bereft the context. The judgment is to be read as a whole and even the observations which have been

made by the Supreme Court in para 6 of the judgment are to be considered in light of the earlier observations made in para 5 where presence of credible material before the detaining authority has been insisted upon. Thus, litmus test to find out as to whether it is a case of breach of public order, material has to be there. In the case of K.S.Zala before the Supreme Court, the detaining authority had also relied upon the statements of the witnesses so as to show that violence resorted to by the petitioner in that case had disturbed the even tempo of public life and the material on record had shown that members of the public of those localities had to run away from there and to go inside their houses and to close their houses and to close their doors. No such fact situation has been mentioned in the present case and the ground with regard to the statements of the three witnesses has been rejected by the learned Single Judge himself and it has been held that there had been violation or infringement of the petitioner's right against such statements. In this view of the matter unregistered cases and with regard to the three incidents the material germane for the purpose of consideration of the threat to the public health and public order. Thus, the only material which remains is the registered criminal cases and that by itself cannot be said to be a material for the purpose of holding that the appellant's activities had become a threat to the public order and public

> health. Necessary material in this regard is totally wanting in the body of the detention order itself. In large number of cases, the Supreme Court has considered that involvement in bootlegging activities even if coupled with violence does not amount to threat to public order or public health. The mere mention of allegations unless they are supported by any material cannot be said to be material germane for the purpose of arriving at the satisfaction with regard to breach of public order or public health and we find that after giving particulars of criminal cases, the detaining authority by including certain allegations, not supported by any credible material has simply observed that the appellant's activities were on obstacle to the public health and public order. In this view of the matter keeping in view the observations made by the Supreme Court in the case of K.S.Zala Vs. State of Gujarat (Supra) itself in paras 4 and 5, we do not find that it can be held to be a case of breach of public health and public order."

In view of the above position of law, in the present case a solitary crime is registered against the petitioner and the petitioner is also in judicial custody. Apart from the said offence registered with Panthawada Police Station under the

provisions of Bombay Prohibition Act, no relevant or credible materials exist against the detenue simply the registration of the crime or even seizure of I.M.F.L. On a solitary crime cannot be disturbed the public order or the general health of the public. This is a case where remedy under ordinary law is sufficient. This can be a case at the most of maintenance of law and order and not the disturbance of the public order or the general health of the public. In these circumstances the subjective satisfaction of the detaining authority that registration of crime against the detenue on a solitary crime also cause disturbance to the public order or the general health of the public is not based on any relevant or credible materials which may lead to the conclusion that such activities of the detenue is prejudicial to the maintenance of the public order or the general health of

the public. Even the magnitude or the gravity of the offence, devoid of any other consequential effect on public order disturbing the even tempo of social and normal life of the people at large, cannot be said to be justified for invoking the powers as exercised by the Detaining authority under the provisions of the PASA Act.

7.In view of the above decisions of the Apex Court and this Court, in the facts of this case also simply registration of offences under Bombay Prohibition Act, 1949 against the detenue, by itself can not have bearing on public order or health of the public and gravity of magnitude of these offences are not of such a nature, which may disturb even tempo of normal public life.

8. For the reasons recorded above, the order

of detention dated 06.07.2005 is hereby ordered to be quashed and set aside and the detenue Vegasing Swarnsing Jat is ordered to be set at liberty forthwith if not required in any other offence by any other authority.

9. Rule is made absolute accordingly. Direct Service is permitted.

(ANANT S. DAVE, J.)

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